

CHAPTER 268

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 19-1289

BY REPRESENTATIVE(S) Weissman, Arndt, Buentello, Cutter, Duran, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Lontine, Michaelson Jenet, Roberts, Sirota, Snyder, Sullivan, Tipper, Titone, Valdez A., Bird, Buckner, McCluskie, McKean, Soper;
also SENATOR(S) Foote and Gonzales, Bridges, Winter.

AN ACT

CONCERNING THE CREATION OF ADDITIONAL PROTECTIONS IN THE COLORADO CONSUMER CODE, AND, IN CONNECTION THEREWITH, ENABLING ENFORCEMENT OF THE "COLORADO CONSUMER PROTECTION ACT" FOR RECKLESS ACTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 6-1-103 as follows:

6-1-103. Attorney general and district attorneys concurrently responsible for enforcement. The attorney general and the district attorneys of the several judicial districts of this state are concurrently responsible for the enforcement of this ~~article~~ **ARTICLE 1**. Until the Colorado supreme court adopts a venue provision relating to this ~~article~~ **ARTICLE 1**, actions instituted pursuant to this ~~article~~ **ARTICLE 1** may be brought in the county where an alleged deceptive trade practice occurred or where any portion of a transaction involving an alleged deceptive trade practice occurred, or in the county where the principal place of business of any defendant is located, or in the county in which any defendant resides. AN ACTION UNDER THIS ARTICLE 1 BROUGHT BY THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY DOES NOT REQUIRE PROOF THAT A DECEPTIVE TRADE PRACTICE HAS A SIGNIFICANT PUBLIC IMPACT.

SECTION 2. In Colorado Revised Statutes, 6-1-105, **amend** (1)(a), (1)(b), (1)(c), (1)(e), (1)(o), (1)(ll), (1)(hhh), and (1)(iii); and **add** (1)(nnn) and (4) as follows:

6-1-105. Unfair or deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

occupation, the person:

(a) EITHER knowingly OR RECKLESSLY passes off goods, services, or property as those of another;

(b) EITHER knowingly OR RECKLESSLY makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;

(c) EITHER knowingly OR RECKLESSLY makes a false representation as to affiliation, connection, or association with or certification by another;

(e) EITHER knowingly OR RECKLESSLY makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

(o) EITHER knowingly OR RECKLESSLY fails to identify flood-damaged or water-damaged goods as to such damages;

(ll) EITHER knowingly OR RECKLESSLY makes a false representation as to the results of a radon test or the need for radon mitigation;

(hhh) EITHER knowingly OR RECKLESSLY represents that hemp, hemp oil, or any derivative of a hemp plant constitutes retail marijuana or medical marijuana unless it fully satisfies the definition of such products pursuant to section 44-12-103 (22) or section 44-11-104 (11);

(iii) EITHER knowingly OR RECKLESSLY enters into, or attempts to enforce, an agreement regarding the recovery of an overbid on foreclosed property if the agreement concerns the recovery of funds in the possession of:

(I) A public trustee prior to transfer of the funds to the state treasurer under section 38-38-111; ~~C.R.S.~~; or

(II) The state treasurer and does not meet the requirements for such an agreement as specified in section 38-13-128.5; ~~C.R.S.~~;

(nnn) EITHER KNOWINGLY OR RECKLESSLY ENGAGES IN ANY UNFAIR, UNCONSCIONABLE, DECEPTIVE, DELIBERATELY MISLEADING, FALSE, OR FRAUDULENT ACT OR PRACTICE.

(4) FOR PURPOSES OF THIS SECTION, "RECKLESSLY" MEANS A RECKLESS DISREGARD FOR THE TRUTH OR FALSITY OF A STATEMENT OR ADVERTISEMENT.

SECTION 3. In Colorado Revised Statutes, 6-1-112, **amend** (1)(a) and (1)(c); and **add** (2) as follows:

6-1-112. Civil penalties. (1) The attorney general or a district attorney may bring a civil action on behalf of the state to seek the imposition of civil penalties as follows:

(a) Any person who violates or causes another to violate any provision of this ~~article~~ ARTICLE 1 shall forfeit and pay to the general fund of this state a civil penalty of not more than ~~two~~ TWENTY thousand dollars for each such violation. For purposes of this ~~paragraph~~ (a) SUBSECTION (1)(a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved. ~~except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.~~

(c) Any person who violates or causes another to violate any provision of this ~~article~~ ARTICLE 1, where such violation was committed against an elderly person, shall forfeit and pay to the general fund of the state a civil penalty of not more than ~~ten~~ FIFTY thousand dollars for each such violation. For purposes of this ~~paragraph~~ (c) SUBSECTION (1)(c), a violation of any provision of this ~~article shall constitute~~ ARTICLE 1 is a separate violation with respect to each elderly person involved.

(2) FOR ACCOUNTING PURPOSES, A FINE OR PENALTY RECEIVED BY THE STATE UNDER THIS ARTICLE 1 IS A DAMAGE AWARD.

SECTION 4. In Colorado Revised Statutes, 6-1-113, **amend** (2) introductory portion, (2)(a)(I), and (3) as follows:

6-1-113. Damages. (2) Except in a class action or a case brought for a violation of section 6-1-709, AND NOTWITHSTANDING ANY OTHER LAW, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in this ~~article shall be~~ ARTICLE 1 is liable in an amount equal to the sum of:

(a) The greater of:

(I) The amount of actual damages sustained, INCLUDING PREJUDGMENT INTEREST OF EITHER EIGHT PERCENT PER YEAR OR AT THE RATE PROVIDED IN SECTION 13-21-101, WHICHEVER IS GREATER, FROM THE DATE THE CLAIM UNDER THIS ARTICLE 1 ACCRUED; or

(3) Any person who brings an action under this ~~article~~ ARTICLE 1 that is found by the court to be FRIVOLOUS, groundless and in bad faith, or for the purpose of harassment shall be liable to the defendant for the costs of the action together with reasonable attorney fees as determined by the court.

SECTION 5. Applicability. Sections 2 and 3 of this act apply to civil actions filed on or after the effective date of this act. Section 4 of this act applies to judgments entered into on or after the effective date of this act.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 23, 2019